

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

---

JOHN DOE	:		
	:		
Plaintiff	:		
v.	:		CIVIL ACTION NO: 18-cv-2044
	:		
SAINT JOSEPH'S UNIVERSITY	:		
	:		
And	:		
	:		
JANE ROE	:		
	:		
Defendants	:		

---

**PLAINTIFF'S BREIF IN OPPOSITION TO THE MOTION FOR SUMMARY  
JUDGEMENT OF DEFENDANT SAINT JOSEPH'S UNIVERSITY**

**TABLE OF CONTENTS**

<b>INTRODUCTION</b>	1
<b>I. STATEMENT OF DISPUTED AND UNDISPUTED FACTS</b>	1
SJU's Disciplinary Policies and Procedures	1
a. Doe	16
b. Roe	18
c. SJU's "Investigation" of the incident	26
<b>II. LEGAL STANDARD</b>	44
<b>III. LEGAL DISCUSSION</b>	46
<b>A. Title IX: Statute and Guidance</b>	46
a. Erroneous Outcome	51
1. Elements of an Erroneous Outcome	51
2. Flaws in SJU's investigation lead to an erroneous finding of guilt	52

3. The evidence establishes that gender bias was a motivating factor behind SJU's erroneous conclusion that Doe was guilty	57
A. SJU's failure to adjust handling of sexual misconduct claims in light of the 2017 DCL and Q&A is evidence of gender bias	62
B. SJU's award of a \$300,000 Grant from the OVW, with its concomitant obligation to evidence "progress" in handling sexual misconduct claims, is evidence of gender bias	64
C. The training and educational materials SJU prepared and published are evidence of gender bias	65
D. Statements by various SJU employees is evidence of gender bias	67
E. The statements and conduct of Dr. Perry, a significant decision-maker in Doe's case, is evidence of gender bias	70
F. The statements and conduct of Ms. Malloy, a significant decision-maker in Doe's case, is evidence of gender bias	73
(b) Sexual Exploitation Case	77
1. SJU's handling of Doe's case is evidence of gender bias	78
2. SJU's handling of other disciplinary cases under the SMP is evidence of gender bias	79
b. Selective Enforcement	80
1. The Softball Cases	81
2. The Staff Member Case	84

<b>B. Breach of Contract</b>	87
1. SJU breached its contractual promise to comply with Title IX by subjecting Doe to a gender-biased, fundamentally unfair disciplinary process	89
2. SJU’s failure to provide Doe with adequate notice of the charges against him was fundamentally unfair	96
3. SJU’s failure to give Doe an opportunity to see or know about evidence and witnesses against him was fundamentally unfair	99
4. SJU breached its contract in failing to apply and follow the definition of “sexual assault” set forth in its SMP	99
5. SJU failed to conduct a fundamentally fair investigation led by an trained investigator	102
6. SJU interpreted and applies the provisions of its SMP appeal process in a fundamentally unfair way	106
7. SJU failed to appropriately accommodate Doe’s know learning difference	107
<b>C. UTPCPL</b> The Facts Support the Plaintiff’s Claim for Violation of the Unfair Trade Practices and Consumer Protection Law	108
<b>D. Defamation</b> Plaintiff’s Complaint and the deposition testimony of SJU officials create material issues of fact that preclude Summary Judgement (Section heading missing)	111
<b>IV. CONCLUSION</b>	114